IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CWP No.16957 of 2006
Date of Decision: 24.4.2007

The Executive Engineer

Petitioner

versus

Kumesh and another

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Shri Harish Rathee, Sr.DAG Haryana for the petitioner

Jasbir Singh, J. (Oral)

This writ petition has been filed with a prayer to quash award dated 8.3.2006 (Annexure P/5), passed by the Industrial Tribunal-cum-Labour Court at Panipat, ordering reinstatement of the respondent-workman along with payment of 50% of the back wages.

It is an admitted fact that the respondent-workman continuously remained in service of the petitioner from 1.3.1996 to 31.3.1997. He raised a dispute, by stating that his service was wrongly terminated on 1.4.1997 without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short, the Act). When conciliation proceedings failed, the matter was referred to the Tribunal, for adjudication. After recording evidence of the parties and on perusal thereof, the Court below came to a conclusion that the respondent-workman had completed 240 days in service, during 12 months preceding to his termination. It was also found, as a matter of fact, that retrenchment

compensation was not paid at the time when service was terminated. After analyzing evidence on record, it was observed thus:-

> *"There is no dispute that Sh.Kumesh Kumar claimant has worked with the respondent as daily wager from 1.3.96 to 3.3.97 continuously in Sub Division No.7 of the respondent and his monthly salary was Rs.1548.60. The respondent in this regard has admitted this fact in its written statement as well as the MW1 has admitted during his cross-examination that he has completed more than 240 days continuous service in the calendar year preceding the date of his termination. Thus, the workman has fulfilled the condition required under Sec.25-B of the Act. Thus the dispute remains adjudicated where the workman's service have been retrenched/ terminated in violations of the provisions of Sec.25-F of the Act or not, as the respondent has alleged that his services have been retrenched after giving notice to him in view of the directions of the Engineer-in-Chief, PWD, Public Health Branch, Haryana, Chandigarh dated 16.8.96. However, it is material to note that the respondent has never pleaded in the written statement on which date the retrenchment notice and payment thereof have been made to him in compliance of the provisions Sec.25-F of the Act i.e. pay, notice pay in lieu of notice and due retrenchment compensation. The respondent however, suggested to the workman WW1 that he has been paid compensation for retrenchment which he has denied. But there is no specific cross-examination on which date the said retrenchment notice was served on him and what amount have*

been paid to him. Though under the provisions of law they were required to give the notice and the required retrenchment from the date of termination of his services i.e. 31.3.97. Even MW1 through his affidavit Ex.MW1 has vaguely stated that retrenchment notice as per provision laid down in the Act was issued to the workman in accordance with the directions of the Engineer-in-Chief, PWD, Public Health Branch, Haryana Chandigarh and that the workman has refused to accept the retrenchment notice but without explaining this witness has also produced some documents which are MW1/2 to MW1/14. However, Ex.MW/2 to MW1/13 are the photocopies of muster rolls and Ex.MW/14 is a detail regarding payments made to the workman Sh.Kumesh Chander. Though, it is monthly payment for 3/96, 4/96, 5/96, 6/96 to 2/97, which is Rs.1443/- for the period 6/96 to 2/97 each while on 3/96 salary of Rs.55.70 and for 4/96 is Rs.1443/- and for 5/96 Rs.1665.60/- is shown. Thus these documents are relevant for the purposes of payment of retrenchment compensation to the workman. Thus, there is no evidence on record to prove that the workman was retrenched in accordance with the provisions of law by giving the required retrenchment notice and the payment accordingly. Hence, it was an illegal termination/ retrenchment of the workman dated 31.3.97. Admittedly neither any notice nor pay in lieu of notice or retrenchment compensation was paid to him. Thus it is in violation of the mandatory provision of Sec.25-F of the Act. Hence, the workman is entitled to reinstatement with continuity of service and back wages

though at the rate of 50% on the basis of last drawn salary of Rs.1443/- (Ex.MW1/4) from the date of demand notice dated 30.9.2002. Hence, I decide this issue in favour of the workman."

It is contention of counsel for the petitioner that retrenchment compensation was offered at the time when notice, terminating service, was issued to the respondent-workman. Perusal of notice Annexure P/2 clearly indicates that the demand draft, towards compensation amount, was not annexed with that notice. The workman was asked to collect the same from the office. To know authenticity of the contention raised, we asked Shri Rathee to produce the original record, to see as to whether any demand draft was prepared on the date when service was terminated. Despite two opportunities given, that record has not been produced. No case is made out for interference.

Dismissed.

(Jasbir Singh)
Judge

April 24, 2007 **(Nirmal Yadav)**
gk **Judge**